

U.S. Serial No. 09/805,522
Amendment dated December 28, 2006
Response to Office Action mailed June 28, 2006

REMARKS

I. Status of the Claims

Claims 1-8 and 14-20 are pending in the application, with claims 9-13 withdrawn from consideration. In the outstanding Office Action, claims 1-8 stand rejected, with claims 14-20 withdrawn from consideration. By the present Amendment, 1-3, 5 and 7 and 8 have been amended, claims 4 and 14-20 have been cancelled and new claims 21-26 have been added. No new matter has been added by virtue of the present amendments. Favorable reconsideration of the application is respectfully requested.

II. Examiner Interview

Applicant would like to thank the Examiner for the courtesies extended during the interview of December 12, 2006. During this interview the Applicant presented an argument distinguishing the Gould reference (which argument is summarized below) and, following distinguishing Gould, the Examiner expressed the view that claim 1 was similar to an insurance policy, such as automobile insurance, having a deductible, the deductible being a first loss.

Applicant respectfully submits that insurance having a deductible is not the same as, and does not render obvious, the invention of amended claim 1. First, insurance having a deductible does not teach or suggest using insurance for the purpose of funding a loan. More specifically, claim 1 is directed to a novel, non-obvious method of funding a pool of loans that involves securing insurance on the loans and increasing the rating associated with the loans, which makes funding of the loans more efficient. Second, the deductible referred to by the Examiner involves an insurer obtaining a deductible from the party that it insures; it is the same party receiving the

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insurance and paying the deductible. In contrast, claim 1 is directed to one entity obtaining insurance and a separate entity (i.e., the lending institution) taking on the first loss. Thus, although insurance products including a traditional deductible would be covered by claim 1 as presently written if the remained of the claim elements were practiced, Applicant respectfully submits that the method of claim 1 is not anticipated by a traditional "deductible" type arrangement.

Applicant respectfully submits that new independent claim 21 is similarly distinguishable from insurance having a deductible.

III. Rejections under 35 U.S.C. §112

Claim 6 stands rejected under 35 USC §112, second paragraph, as being indefinite. In this regard the Office Action notes that the term "a bankruptcy-remote entity" is unclear. Applicant respectfully submits that such term is well known to one of ordinary skill in the art. The term bankruptcy-remote entity is used to refer to an entity (and its assets) that continues to exist and operate outside of bankruptcy even though another entity is deemed bankrupt (e.g., has filed for protection under Chapter 11 of the U.S. Bankruptcy Code). For example, Chapter 17 of the Asset Protection Book defines a Bankruptcy Remote Entity as "a business entity structured so that in the event of a bankruptcy the liabilities created by the entity do not pass to any other entities or assets of the owner." Such representative definition is attached hereto. This is how this term is used in this application.

In the context of the present disclosure, the bankruptcy-remote entity would not be brought into the bankruptcy proceedings if the lender does enter bankruptcy. The specification

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states, "the lender transfers its loan (the term "loan" also referring to pool of loans) to an entity comprised of a bankruptcy-remote entity ... and a trust. In that way the loan is now shielded from the creditors of the lender, and becomes a more desirable financial instrument." In other words, although creditors of the lender would have claims against the assets of the lender if the lender goes bankrupt, such creditors would not necessarily have a claim against the assets of the bankruptcy-remote entity. Thus, the term is well known in the art and use of the term in the present application is consistent with the well known meaning of the term.

Accordingly, Applicant respectfully submits that the claim points out and distinctly claims subject matter regarded as the invention and requests withdrawal of the rejections under §112.

IV. Rejections under 35 USC §103

A. Independent Claims

Claims 1-8 stand rejected under 35 USC §103 as being unpatentable over U.S. Patent No. 5,966,700 to Gould et al. ("Gould"). Applicant respectfully traverses the rejection.

Claim 1, as amended, involves a lending institution providing a financial guaranty to an insurance company as first loss protection for the loan and receiving insurance for the loan from the insurance company based on the financial guarantee. As such, the lending institution retains a first loss. Because the lending institution selectively retains the first loss, which typically is the most expensive and risky, the lending institution has the ability to more effectively, and readily, obtain insurance and transfer risk. Specification, paragraph 29.

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In this regard, claim 1 recites in relevant part:

1. A method of a lending institution funding a pool of loans, with one or more insurers, the pool of loans having associated therewith a first rating or no rating, an aggregate amount and a first loss, the method comprising:

the lending institution assuming risk of the first loss by providing a first loss financial guaranty, the first loss being a percentage of the aggregate amount of the pool of loans....

In contrast, the portion of Gould cited in the Office Action (See Gould, Column 3, line 30 -- Column 4, line 57) does not teach or suggest the method of facilitating funding of a loan that includes a lending institution providing a financial guaranty to an insurance company. The lending institution in Gould does not provide a financial guaranty as first loss protection. To the contrary, FHLB, which the Office Action identifies as the insurance company, retains the first loss and the lending institution, only retains loss under certain conditions above the calculated base level (i.e., above the first loss). The Office Action states that the FHLB provides insurance against losses that exceed a maximum credit risk, but this is not correct. See Office Action, pg.

4.

The relevant portion of Gould states,

The funding institution uses the management system of the present invention to calculate the mortgage originator's credit responsibility for each loan. The management system also allows the funding institution [FHLB, which the Office Action considers to be the insurance company] to fund a spread account in an amount which approximates the mortgage pool's expected loss performance which is the expected loss due to foreclosures over the pool's life. The spread account establishes the base level credit

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risk and provides for its coverage by the funding institution. The spread account is used to fund initial losses [i.e., first loss] from the mortgage pool and the mortgage originator's enhancement is only used if the spread account is fully depleted. Thus the credit risk in excess of the base level up to a certain reserve percentage will be liable to the mortgage originator, while catastrophic risk (over the reserve percentage) is taken by the funding institution. (Gould Column 3 line 55 to Column 4 line 2) (emphasis added).

The FHLB/insurance company funds the spread account that establishes a base level risk up to a certain reserve percentage. The base level risk is the first loss protection and in Gould it is provided by the insurance company, not the funding institution, as recited in the claims. As such, Gould fails to teach or suggest the limitation of the lending institution providing "a financial guaranty to an insurance company as a first loss protection for the loan."

Accordingly, Applicant respectfully submits that independent claim 1 is neither anticipated nor rendered obvious by Gould and is in condition for allowance.

B. New Independent Claim 21

Applicant respectfully submits that new claim 21 is distinguishable over Gould for at least the reasons noted above in connection with claim 1. Like claim 1, the method of claim 21 provides for the lending institution taking on the risk of the first loss. In this regard claim 21 recites in relevant part: "securing reinsurance for a first loss on the pool of loans from the lending institution."

As argued above, in Gould, the insurer, not the lender, takes on the risk of the first loss. Accordingly, Applicant respectfully submits that independent claim 21 is neither anticipated nor rendered obvious by Gould and is in condition for allowance as well.

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C. Dependent Claims

i. Claims 2, 3, 7, 8, 22 and 23

Claims 2, 3, 7, 8, 22 and 23 recite that the "the lending institution comprises a lender and a reinsurer, and . . . the financial guaranty is reinsurance provided by the reinsurer." The reinsurer provides first loss protection for the loan or pool of loans. This provides a novel form of funding and will assure that the lender has access to more cost effective funding. Specification, paragraph 29.

Applicant respectfully submits that Gould does not teach or suggest a lending institution that comprises a lender and a reinsurer. In rejecting the previously pending claims, the Office Action equates the FHLB to the insurance company, the mortgage originator to the lender and reinsurer (or entity providing the financial guaranty), the risk allocation agreement to a financial guaranty and states that the underwriting is interpreted to include reinsurance. June 28, 2006 Office Action, pgs. 4-5. The Office Action also states, "the mortgage originator bears the risk up to a certain reserve percentage, which is what reinsurers do." June 28, 2006 Office Action, pg. 5. But, in Gould, the mortgage originator does not bear the risk up to a certain reserve percentage. To the contrary, in Gould, as discussed above, the insurance company bears the risk up to a certain reserve percentage in the form of a spread account, not the mortgage originator. Thus, in Gould the FHLB, the insurance company bears the first loss; the first loss in Gould is not retained by the lending institution, as the claimed invention.

Also, contrary to the rejection, underwriting cannot be interpreted to include reinsurance. Underwriting is the process involving paperwork to decide whether or not to make a loan. It is

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unrelated to and cannot be interpreted to include reinsurance. Using reinsurance is a novel approach to this type of funding. In Gould, the FHLB uses this management system to calculate the mortgage originator's responsibility for each loan. (Gould, Column 3, line 55). This is very different to the present invention where the lending institution obtains reinsurance from a reinsurer. The amount of reinsurance needed is not calculated for each loan, but rather it is calculated on hypothetical factors determined by a pool of loans not an individual loan. Specification, paragraph 34. As such, Gould fails to teach or suggest a lending institution that comprises a lender and a reinsurer.

Furthermore, such arrangement, wherein the lending institution includes a related reinsurer, which retains a first loss, not by way of a simple deductible, but rather through a reinsurance relationship, is neither anticipated nor rendered obvious by insurance policies having a deductible.

ii. Claims 5-6 and 24-25

Claim 5 (from which claim 6 depends) and claim 24 (from which 25 depends) provide that the entity that secures insurance for the loans from the insurer issues a note that is insured by an insurance company.

This embodiment is beneficial when the lender is not rated and its loans are not rated making it difficult and expensive to secure investors. Specification, paragraph 26. By transferring the loan to an entity (such as a bankruptcy-remote entity) that issues a note to obtain funding of the loan, the loan becomes shielded from creditors and becomes a more desirable financial instrument for potential investors. Specification, paragraph 26.

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Applicant respectfully submits that Gould fails to teach or suggest a loan comprising a pool of loans, wherein the loan is transferred by a lending institution to an entity that issues a note to obtain funding of the loan and wherein the note is insured by the insurance company, as in claims 5 and 24, and wherein the entity comprises a bankruptcy-remote entity and a trust, as in claims 6 and 25. The Office Action states, the custodian is interpreted to be the entity to which the loans are transferred. June 28, 2006 Office Action, pg. 5. A custodian cannot be interpreted to be the entity to which the loans are transferred. In Gould, the custodian only contracts with the insurance company to simply hold the notes. Gould, Column 4, line 25 – Column 4, line 39. In claims 5, 6, 24 and 25, the loan is actually transferred by the lending institution, not the insurance company, to a separate entity comprised of a bankruptcy remote entity and a trust. The entity issues the note. Thus, the custodian cannot be interpreted to be the entity to which the loans are transferred. As such, Gould does not teach the steps wherein the loan comprises a pool of loans; wherein the loan is transferred by the lending institution to an entity that issues a note to obtain funding for the loan, and wherein the note is insured by the insurance company and wherein the entity comprises a bankruptcy-remote entity and a trust.

Furthermore, such arrangement involving issuance of one or more notes is neither anticipated nor rendered obvious by insurance policies having a deductible.

Accordingly, Applicant respectfully submits that, in addition to the reasons noted above in connection with the independent claims, the dependent claims are distinguishable from the art of record for the additional reasons noted above and are also in condition for allowance.

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CONCLUSION:

Applicants submit that the claims in the present application are in condition for allowance. Applicants therefore respectfully request reconsideration of the present application in view of the foregoing amendments and remarks. If the Examiner has any questions or suggestions regarding this response or the application, he is invited to contact the undersigned at the telephone number provided below.

If any extension of time is required to have this paper entered and considered, such extension is hereby petitioned. Any additional fees or charges necessary in connection with the present application are hereby authorized to be charged to Deposit Account No. 19-4709.

Respectfully submitted,

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Ch. 17: Domestic Corporations

• General Corporation Law

Links to the Delaware General Corporation Law and selected opinions interpreting that legislation are available at <http://www.assetprotectionbook.com/delaware.htm>

Synopsis: Discusses basic operation of the Delaware General Corporation Law.

Definition: Registered Agent – An agent for the corporation who is domiciled in the state of incorporation and is available to receive service-of-process on behalf of the corporation.

• Corporations and Bankruptcy Remote Entities

Synopsis: Discusses the importance of creating liability-producing corporations as bankruptcy remote entities.

Definition: Bankruptcy Remote Entity (BRE) – A business entity structured so that in the event of a bankruptcy the liabilities created by the entity do not pass to any other entities or assets of the owner.

• Choosing the State or Incorporation

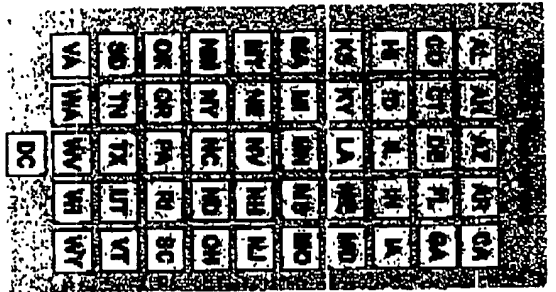
Synopsis: Discusses the relative importance of choosing the state of incorporation, and the concerns where the corporation will hold real state in another state.

• Rights of Creditors

Synopsis: Discusses forum-shopping strategies by creditors to get around the corporate protections.

<http://www.assetprotectionbook.com/ch17.htm>

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**Recommended Reading**

Financing Accounts
Receivables for Retirement
and Asset Protection
by Ronald J. Adkisson



See Also

The Law Firm of
Riaer Adkisson LLP
Asset Protection Solutions
<http://www.rlsad.com>



- **Professional Corporations**

Synopsis: Discusses the benefits of professional corporations.

Definition: Professional Corporation (PC) – A form of corporation that can have only certain licensed professionals as shareholders, and which typically does not protect the professional shareholder from lawsuits brought alleging their professional negligence.

- **Registration of Foreign Corporation**

Synopsis: Discusses the necessity of registering a corporation in a particular state when it has been incorporated elsewhere.

- **Nevada Corporations**

Synopsis: Discusses Nevada corporations, and how Nevada corporations are shamelessly marketed by promoters as being much more effective than they really are.

Definition: Nevada Corporation – A corporation formed in Nevada pursuant to Nevada's corporation act, which provides debtors some advantages not typically found in the corporation laws of other states. Unfortunately, the advantages are usually grossly overstated by promoters who arrange structured based on Nevada corporations that have very serious flaws from the asset protection perspective. Nevada corporations are usually the primary part of the "Asset Protection Consultants" scam that is run from Nevada.

Links to the Nevada Corporation Law and selected opinions interpreting that legislation are available at
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CLIENT/MATTER NAME RE: U.S. Application No. 09/805,522
 Applicant: Douglas Monticciolo
 Filed: March 13, 2001
 For: METHOD OF COST EFFECTIVELY FUNDING
 A LOAN

CLIENT/MATTER NO. 198191/0004

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